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Because of a programming error, some incidents of restraint and seclusion in table 1 of the report were significantly understated. Revised July 11, 2019 to correct that data. Corrections are on pages 3, 4, 5, 6, and 7.

June 18, 2019

The Honorable Roy Blunt  
Chairman  
The Honorable Patty Murray  
Ranking Member  
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies  
Committee on Appropriations  
United States Senate

The Honorable Rosa DeLauro  
Chairwoman  
The Honorable Tom Cole  
Ranking Member  
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies  
Committee on Appropriations  
House of Representatives

## **K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data**

As we reported in February 2019, the Department of Education's (Education) data suggest that the restraint and seclusion of K-12 public school students is rare nationwide, though it disproportionately affects students with disabilities and boys in general.<sup>1</sup> In broad terms, Education defines restraint as restricting a student's ability to freely move his or her torso, arms, legs, or head, and defines seclusion as involuntarily confining a student alone in a room or area from which the student is physically prevented from leaving. Education's 2012 resource document on the use of restraint and seclusion states that restraint or seclusion should never be used except when a child's behavior poses imminent danger of serious physical harm to self or others.<sup>2</sup>

Every 2 years, Education collects and publicly reports data from nearly all public school districts and schools as part of its Civil Rights Data Collection (CRDC).<sup>3</sup> Districts self-report and certify

<sup>1</sup>GAO, *K-12 Education: Federal Data and Resources on Restraint and Seclusion*, [GAO-19-418T](#) (Washington, D.C.: Feb. 27, 2019).

<sup>2</sup>U.S. Department of Education, *Restraint and Seclusion: Resource Document* (Washington, D.C.: May 15, 2012). According to Education, this resource document is intended to serve as a resource for states, localities, and districts to consider when developing policies and procedures on restraint and seclusion.

<sup>3</sup>Except for Puerto Rico, districts in US territories are not required to participate in the CRDC. Similarly, districts are not required to provide information for tribal schools operated by the Department of the Interior's Bureau of Indian Education. Schools operated by the Department of Defense Education Activity are also not required to participate, according to Education.

the data. Education's Office for Civil Rights (OCR) uses CRDC data in its enforcement of various federal civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, and disability.

We have work under way on districts' reporting practices for restraint and seclusion data in response to a provision in the explanatory statement from the House Committee on Appropriations accompanying the Consolidated Appropriations Act of 2018. As part of our data reliability testing for that work, we analyzed the number of districts that left fields pertaining to restraint and seclusion blank, or that reported all zeros for those fields, to determine the prevalence of blanks or zeros in the CRDC at the national, state, and district levels. Our data reliability testing raised questions about the completeness and accuracy of the CRDC restraint and seclusion data. We are therefore issuing this separate report on the issues we have identified to date regarding potentially incomplete data. Because Education is currently collecting and validating restraint and seclusion data for the 2017-18 school year, it is important it take immediate steps to address underreporting before it publishes these data.<sup>4</sup>

As part of this work, we reviewed the explanations that Education requires the largest districts to provide if they report zero incidents of restraint and seclusion. We also reviewed documentation on Education's investigations into underreporting of restraint and seclusion. Additionally, we interviewed federal Education officials and the contractor responsible for maintaining the CRDC and providing routine CRDC technical assistance, as directed by OCR. We conducted this performance audit from March 2019 to June 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Background**

Education requires nearly every school district in the country to submit data on their schools to Education's CRDC through an online submission tool.<sup>5</sup> This tool automatically performs edit checks, which flag data errors or potential errors. These edit checks are called "business rules" and occur in real time as districts enter data or after they upload files.

The CRDC online tool uses three business rules specifically related to restraint and seclusion data. If the data entered by a district triggers any of these rules, an error message appears with instructions on how to clear the errors. One rule triggers an error message if a district with more than 100,000 students enrolled reports zero incidents of restraint or zero incidents of seclusion.<sup>6</sup> In part, the error message states that, "based on trends in past data, at least one instance of restraint or seclusion occurs within a population greater than 100,000 students." The online tool then prompts the district to correct the error. If the district finds no error, it is instructed to explain

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<sup>4</sup>According to the Department of Education, as of May 22, 2019, 94 percent of districts had submitted their 2017-18 school year data.

<sup>5</sup>There are two options for data submission. Districts may enter data through data entry screens or through a data file upload.

<sup>6</sup>For 2017-18, the threshold was lowered so that the rule applied to districts with more than 50,000 students enrolled. The other two rules are logic tests that compare the number of incidents to the number of students subjected to restraint and seclusion.

why the data it submitted were valid. For districts of any size, if data are missing, districts are required to provide an explanation and submit an action plan for reporting the required data in the next CRDC.<sup>7</sup>

Districts must certify that the data they submit are “true and correct,” which is a step completed by the district superintendent or an authorized designee. The CRDC submission tool should not allow a district to certify its submission unless all required data pass the system validation checks or all errors are explained. If districts have not collected the data required for the CRDC—or if the data are unavailable for some other reason—districts are to leave relevant data cells blank. A zero in a data cell should represent an actual count—that is, zero students were restrained or secluded.

Education’s contractor, working in conjunction with OCR, conducted the 2015-16 CRDC and is currently coordinating the 2017-18 CRDC. At OCR’s direction, the contractor manages all aspects of the CRDC, including the online submission tool, data quality, and data analysis. The contractor also provides routine technical assistance by responding to requests from districts that need help.

In January 2019, Education officials announced an initiative to address inappropriate use of restraint and seclusion. According to Education officials, OCR will conduct data quality reviews of the CRDC in four to five school districts in each of OCR’s 12 regions, and provide technical assistance to schools to ensure districts are collecting and reporting accurate restraint and seclusion data.

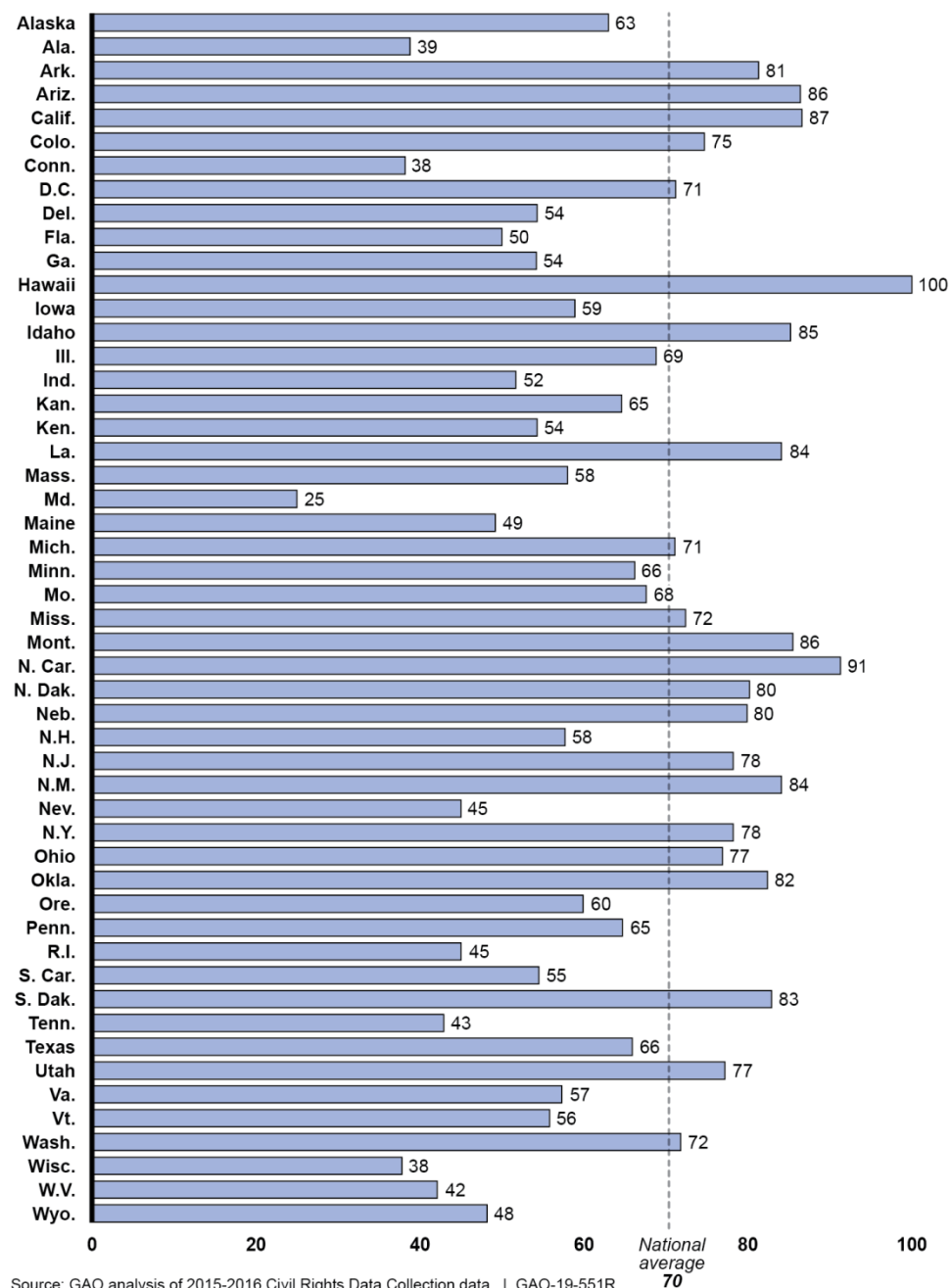
### **CRDC Data Do Not Reflect All Incidents of Restraint and Seclusion**

For the most recent CRDC—school year 2015-16—70 percent of the more than 17,000 school districts in the U.S. reported zero incidents of restraint and zero incidents of seclusion. In 39 states and the District of Columbia, more than half of the school districts reported zeros; and in 12 states, 80 percent or more of the districts reported zeros. (See fig. 1.) However, our analyses of 2015-16 CRDC data and review of Education documents indicate that CRDC data do not accurately capture all incidents of restraint and seclusion in schools.

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<sup>7</sup>According to the manual for the public use file for the 2015-16 CRDC, to indicate the reason why a district was able to certify its submission with a blank, Education’s contractor later adds a “reserve code” to the blank field. For example, one code indicates that although the data are missing, the district was able to certify its submission because it submitted an action plan. Other codes indicate that the field is blank because of a system error or because the district was able to skip questions that did not apply to that district.

**Figure 1: Percentage of K-12 Public School Districts Reporting Zeros Related to Restraint or Seclusion, by State, School Year 2015-16**



Note: At the time of our review, the latest data available were from the 2015-16 school year. Restraint includes both physical restraint and mechanical restraint. Hawaii has only one school district.

While according to Education’s business rule districts with more than 100,000 enrolled students are likely to have at least one incident of restraint or seclusion, one-third (10 of 30) of such

districts in the country reported zeros in the 2015-16 school year.<sup>8</sup> (See table 1.)

**Table 1: Restraint and Seclusion Data for K-12 Public School Districts with More than 100,000 Students, School Year 2015-16**

District	State	Size Rank	Number of Schools	Number of Students	Incidents of Restraint	Incidents of Seclusion
NEW YORK CITY PUBLIC SCHOOLS	NY	1	1,637	984,500	0 <sup>a</sup>	0
LOS ANGELES UNIFIED	CA	2	785	539,634	108	0
CITY OF CHICAGO SCHOOL DISTRICT	IL	3	579	392,303	47	6
DADE	FL	4	485	358,179	0	0
CLARK COUNTY SCHOOL DISTRICT	NV	5	361	326,238	2,603	0
BROWARD	FL	6	348	269,502	0	0
HOUSTON INDEPENDENT SCHOOL DISTRICT	TX	7	282	215,989	58	0
HILLSBOROUGH	FL	8	289	211,731	17	21
ORANGE	FL	9	243	196,987	11	82
PALM BEACH	FL	10	234	188,590	91	0
FAIRFAX COUNTY PUBLIC SCHOOLS	VA	11	206	185,630	0	0
HAWAII DEPARTMENT OF EDUCATION	HI	12	290	182,913	0	0
GWINNETT COUNTY	GA	13	135	175,958	1,150	0
WAKE COUNTY SCHOOLS	NC	14	171	159,149	0	0
DALLAS INDEPENDENT SCHOOL DISTRICT	TX	15	239	158,941	117	0
MONTGOMERY COUNTY PUBLIC SCHOOLS	MD	16	203	156,819	1,078	337
CHARLOTTE-MECKLENBURG SCHOOLS	NC	17	168	149,270	9	0

<sup>8</sup> Philadelphia City, PA and Prince George's County, MD reported zero students subjected to restraint or seclusion, but left the number of incidents blank, meaning they do not collect the data.

District	State	Size Rank	Number of Schools	Number of Students	Incidents of Restraint	Incidents of Seclusion
PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS	MD	18	208	142,536	b	b
PHILADELPHIA CITY SCHOOL DISTRICT	PA	19	218	133,814	b	b
SAN DIEGO UNIFIED	CA	20	226	130,964	188	35
DUVAL	FL	21	206	129,003	34	24
CYPRESS-FAIRBANKS ISD	TX	22	83	113,912	76	0
SHELBY COUNTY SCHOOLS	TN	23	207	113,208	248	77
COBB COUNTY	GA	24	114	112,708	149	8
BALTIMORE COUNTY PUBLIC SCHOOLS	MD	25	169	110,786	880	365
NORTHSIDE INDEPENDENT SCHOOL DISTRICT	TX	26	116	104,847	0	0
PINELLAS	FL	27	155	102,893	36	39
POLK	FL	28	152	101,468	0	0
DEKALB COUNTY	GA	29	133	101,355	3	0
JEFFERSON COUNTY	KY	30	172	101,018	4,134	257

Source: GAO analysis of 2015-2016 CRDC data. | GAO-19-551R

Note: At the time of our review, the latest data available were from the 2015-16 school year. Restraint totals include both physical restraints and mechanical restraints. Districts that reported no incidents are shaded gray.

<sup>a</sup>New York City's data on mechanical restraint were missing. The district reported zero incidents of physical restraint.

<sup>b</sup>Because Prince George's County, MD and Philadelphia City, PA reported that zero students were subjected to restraint or seclusion while leaving the number of incidents blank, we included them among the districts reporting zeros.

When school districts with more than 100,000 enrolled students reported zero incidents to CRDC, they were to correct the apparent error by modifying the data or confirming that the data were valid. If data were unavailable, they were to leave the fields blank and submit an action plan to explain how they would collect the data in the future. Districts were to report zeros only to indicate that there were no incidents of restraint or seclusion. However, only one of the 10 districts with more than 100,000 enrolled students that reported zeros, Hawaii Department of Education, reported to Education that the zeros actually represented zero incidents. The other nine districts reported zeros but, according to explanations provided to Education or information districts provided publicly, had incidents they did not report, had incidents they were unable to report, or were not collecting the data. Specifically:

- Northside Independent School District in Texas stated that it did not have a way to export its data to the CRDC but could provide the data upon request. Wake County Public School System in North Carolina indicated that it was unable to disaggregate its

restraint and seclusion data by school, race, and gender, as required by the CRDC. Further, neither Northside nor Wake submitted an action plan, as required by Education, to indicate how they would collect and report these data in the future. These districts were able to bypass the CRDC system requirement to provide an action plan because they reported zero incidents instead of leaving the fields blank to indicate the data were missing.

- New York City, NY; Philadelphia, PA; and Prince George's County, MD were not collecting data on restraint and seclusion and should have left the fields blank in the CRDC submission tool. These districts did submit action plans for reporting the data in the future, as required for missing data. However, New York City's action plan only discussed the reasons why it was unable to collect and report data on mechanical restraint. It did not mention collecting the remaining data on physical restraint or seclusion, nor affirm that the zeros were correct. According to Education officials, they did not request that New York City provide a plan for collecting the remaining data. In commenting on a draft of this report, Education stated prior to the 2017-18 submission that it emailed districts with action plans and requested that the districts review their own action plans.
- Fairfax County, VA reported zero incidents of both restraint and seclusion but, according to Education officials, due to a system error, the CRDC business rule was not triggered. Fairfax did not provide an action plan explaining how it would meet reporting requirements in the next collection, according to Education officials. Fairfax County Public Schools have since publicly stated that they did, in fact, have incidents, and in school year 2017-18, had more than 1,600 incidents.
- Restraint and seclusion data for the remaining three districts, all in Florida, were submitted by the state, according to Education officials.<sup>9</sup> The state reported zero incidents for all three districts. While Florida submitted an action plan for some CRDC data elements, the plan did not address the reports of zero incidents of restraint and seclusion. According to Education officials, a submission system error occurred allowing Florida to certify without including the restraint and seclusion data elements in their action plan. Education did not ask Florida to submit a revised plan.

For these nine districts, the CRDC's 2015-16 publicly available data file remains uncorrected. Specifically, the CRDC still indicates that the districts had zeros related to restraints or seclusions, rather than indicating that the districts did not report data. While it is difficult to know the full extent of underreporting of restraint and seclusion in the CRDC, the fact that only one of the 10 largest districts that reported zeros actually affirmed that it had no incidents calls into question the data showing zero incidents for 70 percent of the nation's public school districts.

For the current collection, Education is applying the business rule for reporting zero incidents of restraint and seclusion to more districts, but it is unclear if this change will significantly improve reporting. Education officials said that they were concerned that the 2015-16 collection rule for districts with more than 100,000 enrolled students, which included 30 districts or 13 percent of total public school enrollment, did not adequately help them detect reporting problems. Therefore, in the 2017-18 data collection, they are applying the rule to districts with more than

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<sup>9</sup> Florida submits and certifies data on behalf of all school districts.

50,000 enrolled students. Education officials were unable to provide us with any analysis used to establish either the 100,000 or 50,000-student threshold for the CRDC business rule. We determined that, had this change been in effect for the 2015-16 CRDC, Education's business rule would have applied to just 65 more districts, or to 21 percent of total public school enrollment. However, the rule still does not apply to the overwhelming majority of school districts that report zero incidents of restraint or seclusion, leaving the meaning of zeros unclear for smaller districts attended by about 80 percent of public schoolchildren.

Documents from Education that we reviewed indicated that the misreporting of zeros occurred in smaller districts as well. These erroneous reports were detected either by the media or in the course of larger investigations by Education into restraint and seclusion, rather than by any systemic review of the CRDC data. Specifically:

- After Education's Office of Inspector General received a congressional inquiry in 2018, Education followed up with three smaller districts in Iowa that reported zero incidents of restraint and seclusion, according to documents provided by Education.
- Documentation on Education's website showed that Education found underreporting in previous CRDC collections. Specifically, from 2014 to 2017, Education completed investigations on the inappropriate and disproportionate use of restraint and seclusion and found underreporting in four districts in Texas, Utah, Virginia, and California. Two of these districts reported zero incidents of restraint and zero incidents of seclusion to the CRDC, while Education's investigations revealed that incidents had occurred. A third district reported zero incidents for students without disabilities, stating that no data were maintained for those students, although the district had reported incidents in earlier collection periods.
- CRDC technical data notes accompanying the results of all four CRDC surveys since 2009 (when Education began collecting data on restraint and seclusion) cautioned that districts might have reported zero incidents, instead of indicating that the information was not available. Further, the 2015-16 notes said that districts with incomplete data may have reported zero incidents, and that it is not possible to determine where this may have occurred.

Collecting accurate civil rights data is key to OCR's mission to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights laws that protect students from discrimination on the basis of race, color, national origin, sex, or disability. Federal Standards for Internal Control state that agency management should use quality information to achieve the entity's objectives. These standards also note that such data should be reasonably free from error and bias and faithfully represent what they purport to represent, and that agency management should evaluate sources of data for reliability.<sup>10</sup> Absent reliable and accurate data, neither Education nor the public can know the prevalence of restraint and seclusion in public schools.

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<sup>10</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).



## Instructions for Reporting Zero Incidents versus Reporting Unavailable Data Are Difficult to Find

Education created a CRDC data tip sheet clarifying when school districts should report zero incidents of restraint and seclusion and how to indicate that data are not available. However, the tip sheet may be difficult for districts to find because it is not on the data entry screen itself, nor in the instructions for submitting data files. Instead, the tip sheet is located on a CRDC technical assistance website.<sup>11</sup> Further, we were only able to find the tip sheet after searching page by page on the website because the search function was difficult for us to find.<sup>12</sup> According to Education officials, within the CRDC data tool, there is a link to a list of resources. The tip sheet is on that list of resources, but its instructions are not visible to the person entering the data.

So that external parties can help an agency achieve its objectives and address related risks, Federal Standards for Internal Control state that agencies should communicate information relating to activities that impact the internal control system. Agency management should periodically evaluate its methods of communication and consider a variety of factors in selecting an appropriate method of communication. One such factor to consider is availability. These standards state that information should be readily available to the audience when needed.<sup>13</sup> Absent easily accessible information about how to report accurate data, school districts may continue to erroneously report zero incidents when data are in fact not available, misleading the public and policymakers about the prevalence of restraint and seclusion in public schools.

## Conclusions

Our analyses raise questions about whether the confirmed instances of misreported zeros to the CRDC are indicative of a more pervasive pattern of underreporting of restraint and seclusion in U.S. public schools. Although districts, not Education officials, are required to certify their data as “true and correct,” Education has repeatedly published restraint and seclusion data in its CRDC without always correcting known reporting errors. Data left uncorrected could further undermine the public’s confidence in these data and limit the utility of a dataset intended to assist with federal civil rights monitoring, enforcement, and oversight. We believe the 2017-18 data collection is at risk for similar reporting issues.

A fundamental first step toward improving the quality of the restraint and seclusion data is to assure that when school districts report zero incidents it truly means there were no incidents, and to accurately distinguish districts with no incidents from districts that do not track or collect the data. Given that Education is currently collecting restraint and seclusion data for the 2017-18 school year, it is important that Education immediately take steps to address underreporting. Failure to do so will result in data that continues to provide an incomplete picture of the

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<sup>11</sup>The technical assistance website can be found at <https://crdc.grads360.org/#program>. There is a link to a resources page with the data tip sheet on it within the submission system, but the link does not appear on the data entry screen. In commenting on this report, Education stated that the instructions are available in a new user starter kit. We found that the data tip sheet is referenced but the instructions on the sheet are not included in the kit.

<sup>12</sup> On the website homepage, we found links to five main resource pages with information on preparing and submitting CRDC data. In a separate text box near the bottom of the homepage, we found links to six additional webpages. One of those webpages on “Data Tips” contained the clarification. The clarification did not appear on the data entry screen itself or in the instructions for submitting files.

<sup>13</sup>[GAO-14-704G](#).

prevalence of restraint and seclusion, leaving OCR unable to reliably use a key tool in carrying out its enforcement of civil rights laws.

## **Recommendations**

GAO is making four recommendations to the Department of Education's Office for Civil Rights:

The Assistant Secretary for the Office for Civil Rights should immediately remind and clarify for all school districts that they are to only report zero incidents of restraint and seclusion when there are none and that they are to leave cells blank to indicate when data are not collected or incomplete. The Assistant Secretary should also ensure that instructions for when to record zeros and when to leave cells blank are prominently displayed and readily available to districts as they complete the CRDC. (Recommendation 1)

The Assistant Secretary for the Office for Civil Rights should, as part of the 2017-18 CRDC quality assurance process, follow up with school districts that have already submitted reports of zero incidents of restraint or seclusion to obtain assurances that zero incidents means no incidents or ask the districts to submit corrected data. (Recommendation 2)

The Assistant Secretary for the Office for Civil Rights should monitor compliance with its action plan requirement, and ensure plans are submitted and address all missing data. (Recommendation 3)

The Assistant Secretary for the Office for Civil Rights should prominently disclose for past collections the potential problems with using restraint and seclusion data given the known misreporting issues, such as those detailed in this report involving 9 of the nation's large public school districts. (Recommendation 4)

## **Agency Comments and Our Evaluation**

We provided a draft of this report to the Department of Education for review and comment. Their comments are reproduced in enclosure I. Education agreed with 3 of our 4 recommendations, but provided the caveats that implementation of the recommendations was contingent on the availability of resources, and that the 2017-18 collection was too far along to clarify instructions. However these data have not been published and Education allows districts a significant period of time in which to correct errors. Education disagreed with our fourth recommendation that they correct known errors in previous reporting. Education also provided technical comments, which we incorporated as appropriate.

With respect to our first recommendation, Education agreed to remind districts going forward that they are only to report zero incidents of restraint and seclusion when there are none and to ensure that instructions for when to record zeros and when to leave cells blank are prominently displayed, but said that this reminder is too late for the 2017-18 data collection because 94 percent of districts had already submitted their data. Dependent on available funds and staff resources, Education agreed to feature the instructions more prominently on the website and consider other changes, such as targeted communications and changes in the placement of the instructions for the 2019-20 collection. We are encouraged that Education recognizes the seriousness of this issue and the data quality issues it has allowed to persist when districts inappropriately and inaccurately report zero incidents of restraint and seclusion. While we appreciate that most districts have already submitted data for 2017-18, Education allows districts a significant period of time in which to correct errors. We believe that reminding districts about when to record zeros, even retroactively, could prompt districts to address any errors

before Education publishes these data sometime in 2020, thereby improving the integrity of its CRDC data. We urge Education to remind districts for the current 2017-18 collection about its requirements to only report zero incidents of restraint and seclusion when there are none and when to leave cells blank for the current collection and subsequent collections.

With respect to our second recommendation, Education said it agreed with the overall intent of following up with districts that have already submitted reports of zero incidents to obtain assurances that zero incidents means no incidents. Education stated that once the 2017-18 collection ends, it will review data quality findings, including the reporting of zero incidents, to determine appropriate outreach to states and districts. Education stated depending on available resources, it would also continue to explore opportunities to follow up on submissions of reports of zero incidents. We continue to urge Education to make follow-up a priority before Education makes these data publicly available so that the public, researchers, and federal policymakers that use these data know if it can be relied upon.

With respect to the third recommendation, Education agreed to monitor compliance with its action plan requirement. Education stated that it had recently taken steps to more closely scrutinize action plans for the 2017-18 data collection, including directly communicating with districts about their action plans and scheduling calls with any district that requests similar or repetitious action plans over the course of two or more collections.

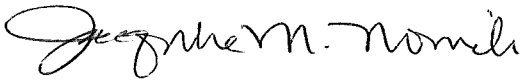
Regarding the fourth recommendation that Education correct known errors in previous CRDC data collections, Education disagreed, saying it did not believe it feasible to continually update the published data files for closed collections due to the need to finalize consistent data for the federal agencies, policymakers, researchers, educators, school officials, and others who use the CRDC data. Instead, Education stated that for the 2015-16 data collection, it would amend the data notes to ensure the public is aware of potential changes. We appreciate Education's concern for its resources. However, as Education pointed out, these data are widely used by policymakers, researchers, educators, school officials, and others. Because there is a compelling reason to believe that there is some misreporting of restraint and seclusion data, and because Federal Standards for Internal Control provide for agencies to use quality information to achieve the entity's objectives, it is important that, at a minimum, Education be clear and transparent about the limitations of the restraint and seclusion data it makes publicly available. We have therefore revised our recommendation to state that for past collections Education should prominently disclose the potential problems with using restraint and seclusion data given the known misreporting issues, such as those detailed in this report involving 9 of the nation's largest public school districts.

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We are sending copies of this report to the Secretary of Education, appropriate congressional committees, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you and your staff have any questions, please contact Jacqueline M. Nowicki at (617) 788-0580 or [nowickij@gao.gov](mailto:nowickij@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report were Sherri Doughty (Assistant Director), Lara Laufer (Analyst-in-Charge), James

Bennett, Holly Dye, Maria Gadel, Morgan Jones, Christy Ley, Jean McSween, John Mingus, Kristin Petroff, and James Rebbe. Also contributing were Deborah Bland and Sheila McCoy.

A handwritten signature in black ink, reading "Jacqueline M. Nowicki". The signature is written in a cursive, flowing style.

Jacqueline M. Nowicki  
Director, Education, Workforce, and Income Security

Enclosure

## Enclosure 1: Comments from the Department of Education



### UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 24, 2019

Ms. Jacqueline Nowicki, Director  
Education, Workforce,  
and Income Security Issues  
Government Accountability Office  
Washington, D.C. 20548

Dear Ms. Nowicki:

Thank you for the opportunity to provide comments on the Government Accountability Office's (GAO) draft report, *K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data* (GAO-19-551R). I am providing comments on behalf of the U.S. Department of Education (Department) regarding the Office for Civil Rights' (OCR) Civil Rights Data Collection (CRDC). I am also attaching to this letter a separate document detailing technical edits for GAO's consideration.

As a threshold matter, the Department shares GAO's concern with the issue of restraint and seclusion practices in our nation's schools. Indeed, on January 17, 2019, Secretary Betsy DeVos announced the Department's initiative on the inappropriate use of restraint and seclusion, which is overseen by OCR, in partnership with the Office of Special Education and Rehabilitative Services (OSERS).<sup>1</sup> As part of the initiative, OCR has made restraint and seclusion the focus of its primary proactive compliance initiative for this fiscal year, independent of GAO's review. OCR's current focus on restraint and seclusion is broader than GAO's review, since it includes not only improvement of data issues but also compliance with federal disabilities laws. We agree with GAO that data quality and accuracy are very important, particularly on an issue like restraint and seclusion, and because accurate reporting may assist in ensuring appropriate use of behavioral strategies and tools given the possibility of abuse that could arise if such tools are used indiscriminately.

As you know, the CRDC is a biennial survey of public schools and school districts in the United States. The CRDC measures student access to courses, programs, staff, and resources that relate to OCR's jurisdiction.<sup>2</sup> The CRDC also is a resource for other federal agencies, policymakers, researchers, educators,

<sup>1</sup> One part of the initiative includes outreach to selected LEAs with restraint and seclusion data anomalies – to ensure data submitted are true and correct. See <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>.

<sup>2</sup> Through the CRDC, OCR collects information from local educational agencies (LEAs) that receive financial assistance from the Department, including public school districts, charter schools, juvenile justice facilities, alternative schools, and schools serving only students with disabilities. This includes LEAs in all 50 states, the District of Columbia, and commencing with the 2017-18 collection, the Commonwealth of Puerto Rico. In addition to reporting by LEAs, some State education agencies (SEAs) assist their LEAs in CRDC reporting. Other U.S. territories are not currently required to participate in the CRDC. Likewise, LEAs are not required to provide information for the CRDC for tribal schools operated by the U.S. Department of the Interior's Bureau of Indian Education, nor are schools operated by the U.S. Department of Defense Education Activity required to participate in the CRDC. In addition, if

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

school officials, parents/guardians, students, other stakeholders, and members of the public. We strive for State education agencies (SEAs) and local educational agencies (LEAs) to report data accurately and completely.

Again, the Department appreciates GAO examining the quality of the data that the CRDC receives from SEAs and LEAs, and GAO's understanding that all data received by the Department are self-reported, and self-certified by the Department's recipients as true and correct by each Superintendent or his or her designee. Because GAO's draft report focuses on ways to improve the CRDC's data quality by examining the 2015-2016 CRDC data, I am highlighting several areas of concern, with the GAO analysis, that we recommend be addressed to achieve this purpose. The Department's responses to GAO's draft report are below.

#### ***OCR's Amended Business Rule for Restraint and/or Seclusion***

Before responding to GAO's recommendations, OCR would first like to address GAO's questions about OCR's current business rule, and how the rule applies to LEAs with 50,000 or greater in student enrollment.<sup>3</sup> OCR would like to point out that the present aim of the business rule is to focus on a subset of LEAs with potentially problematic data submissions, as opposed to creating a rule that triggers an error message for most LEAs. However, OCR will evaluate the effectiveness of this rule in the 2017-18 collection, to determine if any adjustments will be recommended for the 2019-20 collection.<sup>4</sup>

#### ***GAO's First Recommendation:***

*GAO states that the Assistant Secretary for Civil Rights should immediately "remind and clarify for all districts that they are to only report zero incidents of restraint and seclusion when there are none and that they are to leave cells blank to indicate when data are not collected or incomplete," and "ensure that instructions for when to record zeros and when to leave cells blank are prominently displayed and readily available to districts as they complete the CRDC."*

OCR agrees that it is important that LEAs understand the significance of reporting a "zero" figure, or alternatively leaving a data entry cell blank before obtaining an action plan to address a missing data element. OCR also agrees that it is important to ensure that LEAs can access information that is prominently displayed during the CRDC submission process. As GAO is aware, instructions are currently available on the CRDC's New User Starter Kit, on page 14, on the CRDC technical assistance website, under "data tips," and finally, with the data tip links that are accessible on the CRDC on-line submission tool.

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a public school's enrollment for a school year was less than 5 students for fewer than 60 days, OCR may exempt that school from CRDC reporting.

<sup>3</sup> GAO notes that OCR's business rule "still does not apply to the overwhelming majority of school districts that report zero incidents of restraint and seclusion, leaving the meaning of zeroes unclear for smaller districts attended by about 80 percent of public schoolchildren."

<sup>4</sup> A business rule regarding restraint and/or seclusion data was first created for use during the 2013-14 CRDC based on analyses and reviews of the 2011-12 CRDC data following data quality reviews of the 2011-12 CRDC data. Through the data quality reviews, OCR became aware of the need to set "threshold" business rules for a few data elements because of issues raised about whether the largest districts were able to complete the collection by reporting zeros. For restraint and/or seclusion, the data analyses resulted in OCR's decision to implement the business rule focused on what level of student enrollment was appropriate for a threshold. It was established for LEAs with enrollments of 100,000 or more students, which would identify possible misreporting for the largest student populations. For the 2017-18 CRDC, OCR changed the business rule's threshold from 100,000 or more to 50,000 or more students.

However, to the extent that confusion for some LEAs remains, OCR will feature instructions more prominently on the website, and will make changes, dependent on available funds and staff resources. It is clear that GAO would like these changes to be made for the 2017-18 collection, but OCR disagrees as to the timing of the recommended changes, considering that more than 94 percent of all LEAs already have completed data submissions. In the interest of providing LEAs notice of the data collection changes, OCR will consider the changes for the 2019-20 collection. Such changes could include the placement of notices on appropriate websites, augmenting the submission tool so that an instruction message appears before data is entered, targeted LEA communications, and including this information in the letter I send to LEAs announcing the opening of the 2019-20 collection.

***GAO's Second Recommendation:***

*GAO states that the Assistant Secretary for OCR "should, as part of the 2017-18 CRDC quality assurance process, follow up with districts that have already submitted reports of zero incidents of restraint and seclusion to obtain assurances that zero incidents means no incidents or ask the districts to resubmit corrected data."*

Once the 2017-18 collection ends, and the data quality assurance process is finalized, OCR will review data quality findings, including the reporting of zero incidents of restraint and seclusion, to determine appropriate outreach to SEAs and LEAs.<sup>5</sup> Such outreach may not necessarily include a request for an additional signed assurance, since LEAs already currently certify that all submitted data submitted are true and correct.<sup>6</sup> Nevertheless, OCR agrees with the overall intent of the recommendation, which is to accurately reflect the reporting of zero incidents. Depending on available resources, OCR will continue to explore opportunities to follow up on LEAs' submissions of reports of zero incidents of restraint and seclusion for the 2017-2018 collection and for the 2019-2020 collection. Of course, it must be noted that the submission of zeros is not always indicative of incorrect/incomplete data.

***GAO's Third Recommendation***

*GAO states that the Assistant Secretary for OCR "should monitor compliance with its action plan requirement, and ensure plans are submitted and address all missing data."*

OCR agrees with this recommendation, and already has taken steps to more closely scrutinize action plans for the 2017-2018 data collection.<sup>7</sup> The additional safeguards put into place include: directly communicating with each LEA with an approved action plan to seek confirmation that the LEA will take the needed steps to collect and report the data for the 2019-20 collection (to take place at the close of the 2017-18 collection and in advance of the 2019-20 collection); rejecting all 2017-18 action plans that lack a detailed timeline explaining the steps that will be taken to collect missing data in time for the 2019-20

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<sup>5</sup> OCR has an established system in place to promptly address data anomalies and any requests to correct data after the data have been released. When a district believes that data submitted to OCR may be inaccurate, the Department encourages districts to contact OCR directly at [ocrdata@ed.gov](mailto:ocrdata@ed.gov). If OCR receives a data correction request a year or more after a collection closes, OCR will include a data note in the file to alert potential data users.

<sup>6</sup> The current certification reads: "I am authorized to submit the LEA's forms for certification because I am the LEA Superintendent [or designated by the LEA Superintendent to certify]. I certify that the information provided is true and correct to the best of my knowledge and belief. A willfully false statement is punishable by law. (18 U.S.C. § 1001)."

<sup>7</sup> Action plans are created to provide LEAs with an organized means of identifying and addressing missing or incomplete data, as well as the necessary tools to ensure that the data they submit for future collections are true and correct.

collection; and scheduling conference calls with any LEA that requests similar or repetitious action plans over the course of two or more collections.

**GAO's Fourth Recommendation**

*GAO states that the Assistant Secretary for OCR "should correct current and previous data submissions indicating zero incidents of restraint and seclusion that it knows are incorrect."*

OCR assumes that this recommendation centers on the 2015-16 collection, which closed on June 23, 2017. If this assumption is accurate, then GAO is aware that OCR has been actively working to improve data quality as part of the Department's initiative on the inappropriate use of restraint and seclusion. Once OCR completes its review of responses to the letters it issued to recipients selected for data quality reviews, OCR will amend the 2015-16 data notes to ensure that the public is aware of any potential changes to the data.<sup>8</sup> However, GAO should know that it is not feasible to continuously update the published datafiles for closed collections beyond the normal corrections period, due to the need to finalize consistent data for the federal agencies, policymakers, researchers, educators, school officials, parents/guardians, students, other stakeholders, and members of the public who use CRDC data. For these reasons, to the extent the GAO recommendation goes beyond amending data notes, and suggests that OCR re-open final published datafiles for past collections, OCR does not agree with the recommendation. However, OCR will focus its efforts on steps to improve the reporting of incidents of restraint and seclusion for future collections.

On a final point, OCR believes it would be helpful to note that in the administration of the CRDC, OCR and the contractor work closely together, and OCR makes all final substantive decisions for the contractors to implement. In addition, when it comes to the provision of technical assistance to SEAs and LEAs, all novel or significant questions are brought to OCR for a response.

As previously shared, OCR has made restraint and seclusion the focus of its primary proactive compliance initiative for this fiscal year. We will continue to take steps to improve the quality of data received from SEAs and LEAs. This issue is too important to expect anything less.

The Department appreciates the opportunity to provide these comments, as well as the enclosed technical comments on the GAO draft report. We are available to respond to any questions or have further discussions if that would be helpful.

Sincerely,



Kenneth L. Marcus  
Assistant Secretary  
for Civil Rights

Enclosure

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<sup>8</sup> <https://ocrdata.ed.gov/Downloads/Data-Notes-2015-16-CRDC.pdf>.



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